IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 324 of 1986
With
CRIMINAL APPEAL No. 325 of 1986
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CRIMINAL APPEAL No. 326 of 1986

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IDRISMIYA M AHMAD SAIYAD - Appellant(s)
Versus
SURESHCHANDRA KESHAVLAL & 2 - Opponent(s)

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Appearance :
MR VC DESAI for Appellant(s) : 1,
MR DK MODI for Opponent(s) : 1 - 2.
MR MD MODI for Opponent(s) : 1 - 2.
MR HL JANI, APP, for Opponent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1.0 These appeals are directed against the judgement and order dated 1st August 1985 passed by the learned Judicial Magistrate, First Class,Kapadwanj in Criminal Case Nos.1621/76, 1620/76 and 1619/76 whereby the respondents-original accused were acquitted of the charges levelled against them.

2.0 The prosecution case, in short, is that in all the above cases, the Food Inspector of the local area visited the shop of the respondents-accused and collected samples of maize for analysis of the same in the laboratory. After following the proper procedure the samples were sent to Public Analyst for testing the same. On receipt of the analysis report it was found the samples collected by the Food Inspector were found to be adulterated and therefore a complaint came to be filed against the respondents-accused under sections 2(1)(A)(s), 7(1), and 16(1)(A)(1) of the Food Adulteration act.

2.1 Necessary investigation was carried out and at the end of investigation, chargesheet was filed against the respondents-accused. The case was numbered as criminal Case Nos.1621,

1620 and 1619 of 1976 in the court of learned Judicial Magistrate, First Class, Kapadvanj.

2.2 For the purpose of proving the case the prosecution has examined the the complainant and other necessary witnesses. After considering the evidence the learned Magistrate acquitted the original accused of the charges leveled against them. It is against the said judgement and order of acquittal the present appeal has been filed.

3.0 Learned Advocate for the appellant has contended that the trial court has committed an error in not believing the version of the prosecution. He has contended that the trial court has committed an error in holding that there is a breach of rule 17 of the Rules. According to him the trial court has totally ignored the provisions of law which was prevailing on the date of incident i.e. 30.3.1976. He submitted that the amendment came into effect in the year 1976 and the incident is of 30th March 1976. He further submitted that out of three findings of the trial court, two findings are wrong and therefore submitted that the impugned judgement and order requires to be quashed and set aside.

4.0 Learned Advocate for the respondents-original accused has contended that in view of provisions of section 13(2) of the Act, the amendment came into effect in the year 1976, but the letter was sent prior to the filing the prosecution. He has relied upon a decision of this Court dated 25.9.1981 passed in Criminal Appeal

No.260 of 1979 wherein the complaint was lodged on 16.12.1977, the notice contemplated under section 13(2) was served upon the respondent accused much before the complaint was filed. In the said case the accused was not intimated about his statutory right given to him under section 13(2) of the Act.

5.0 Heard the learned Advocate for the appellant and perused the relevant record of the case. Before proceeding further, it is required to be noted the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

6.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach

> of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

6.1 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.2 Further, in the case of M.S. Narayana Menon Vs. State of Kerala, reported in (2006) 6 SCC 39, the Apex Court held that in case of appeal against acquittal, where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

7.0 In the present case, there is a clear finding of the trial court to the effect that there is nothing on record to show that the respondents were intimated about their statutory right given to them under section 13(2) of the Act. The trial court has also found that the accused were not informed that they can send the sample to Central Food Laboratory. Learned Advocate for the appellant is not able to point out anything contrary to the said finding. This contention is supported by the decision rendered by this Court in Criminal Appeal No.260 of 1979 dated 25.9.1981 wherein it was held that the concerned person should be made known to his statutory right at a time when he should have been apprised of the same.

8.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents-original accused of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and I am in agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 It is also required to be noted that in the case of State of Maharashtra V. M/s Gopalprasad Govindprasad Agarwal, reported in AIR 1999 SC 1507, having regard to the fact that the offences were committed almost 20 years ago, the Apex Court refrained from setting aside the acquittal order. In the present case the incident is of 3rd September 1991 and almost 30 years have

elapsed. Therefore, even on this ground, I am of the view that it is not desirable to interfere with the findings of the trial court.

10.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

11.0 In the result, the appeals are dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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